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**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEVADA**

RONALD MCCLURE, an Arizona Citizen; and  
JASON MCCLURE, an Arizona Citizen,

Plaintiffs,

vs.

NARCONON FRESH START d/b/a RAINBOW  
CANYON RETREAT, a California Corporation;  
ASSOCIATION FOR BETTER LIVING AND  
EDUCATION INTERNATIONAL;  
NARCONON INTERNATIONAL; and DOES  
1-100, ROE Corporations I – X, inclusive,

Defendants.

Case No.:2:14-CV-00995-JCM-CWH

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

There is a serious disconnect between what Narconon Fresh Start ("Fresh Start") represented to Plaintiff Ronald McClure ("Ronald") about its drug rehabilitation program and what Fresh Start's program actually entails. Ronald informed Fresh Start he was seeking a drug rehabilitation program for his son, Plaintiff Jason McClure, that provided counseling, on-site 24-hour medical personnel, and did not involve religion in any way. Fresh Start intake specialist, Dan

1 Carmichael, expressly represented to Ronald that Fresh Start's drug rehab met each  
2 of these requirements.

3 Unfortunately, this was false. First, by design, the standardized treatment  
4 program Fresh Start offers, the Narconon program, does not involve counseling. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]  
8 [REDACTED] In discovery responses, Fresh Start has conceded that  
9 it does not provide counseling under the traditional definition of that term. Jason  
10 McClure did not receive the promised counseling at Fresh Start.

11 Second, despite Fresh Start's representation to Ronald that it had on-site 24-  
12 hour medical personnel, Fresh Start does not have any on-site medical personnel.  
13 Fresh Start does not dispute this. Instead, in its Motion for Summary Judgment  
14 (hereafter "Motion"), Fresh Start mischaracterizes Plaintiffs' testimony and argues  
15 that because doctors were available to Jason off-site, it is entitled to summary  
16 judgment. Fresh Start's argument is unavailing and its Motion should be denied.  
17

18 Third, contrary to Fresh Start's representation that its program did not involve  
19 religion, Fresh Start's rehabilitation program is comprised of scriptures from the  
20 Scientology religion. Fresh Start's use of the standardized program is overseen by  
21 members of Scientology's religious order working for the Association for Better  
22 Living and Education International ("ABLE"). Fresh Start is modeled  
23 administratively after Scientology churches. And, Fresh Start has received  
24  
25

1 recognition for getting thousands of beings into Scientology and for introducing the  
2 world to the founder of the Scientology religion, L. Ron Hubbard.

3 In making these misrepresentations, Fresh Start deprived Ronald of the ability  
4 to make a fully-informed decision about where to send his son for drug  
5 rehabilitation. Ronald had good reason for seeking these characteristics in a drug  
6 rehab program for his son. He believed they would provide Jason with the greatest  
7 chance of success at rehabilitation.  
8

9 Based on Fresh Start's misrepresentations, Ronald paid \$33,000.00 to Fresh  
10 Start for Jason to attend its drug rehabilitation. Jason left the Fresh Start program  
11 early and relapsed. Jason began injecting cocaine with two women he met at Fresh  
12 Start, one of whom worked at Fresh Start as an intern.  
13

14 There are triable issues of fact as to Fresh Start's representations to Ron about  
15 its drug rehabilitation program. The Court should deny Fresh Start's Motion as to  
16 Plaintiffs' claims for breach of contract, fraud, negligent misrepresentation, and  
17 deceptive trade practices.<sup>1</sup>  
18

## 19 **II. STATEMENT OF DISPUTED MATERIAL FACTS**

### 20 **A. Fresh Start's representations to Ronald McClure**

21 1. Plaintiff Jason McClure is a successful businessman, operating a number of  
22 businesses with his father, Plaintiff Ronald McClure.  
23  
24

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25 <sup>1</sup> Plaintiffs abandon their remaining claims of negligence, negligence per se, RICO, intentional infliction of emotional distress, civil conspiracy, and breach of implied covenant of good faith and fair dealing.

1 2. Jason has been addicted to cocaine for over ten years. His addiction has taken  
2 a tremendous toll on his personal life and has made it more difficult for Jason to  
3 play an active in managing his businesses. (Defendant's Ex. K at 109).

4 3. Candy Shipley, Ron's daughter and Jason's sister, began seeking a drug  
5 rehabilitation program for her Jason in early 2012. (Plaintiffs' Ex. A, Declaration of  
6 Candy Shipley).

7  
8 4. Ms. Shipley began speaking with Fresh Start intake specialist Dan Carmichael  
9 in early 2012 about Jason attending drug rehab at Fresh Start. (*Id.*)

10 5. Ms. Shipley "asked Dan [Carmichael] very specific questions about the center  
11 [Fresh Start] because [she] knew it was something she was going to have to  
12 convince her entire family of. [She] wanted to make sure the establishment was  
13 NOT religious based and he assured [her] it was NOT." (*Id.*) (emphases in original).

14  
15 6. Mr. Carmichael continued to attempt to make contact with Ms. Shipley for  
16 most of 2012. (*Id.*)

17 7. Ms. Shipley set up a phone call with her parents, Ronald and Linda McClure  
18 to speak with Mr. Carmichael about Jason attending drug rehabilitation at Fresh  
19 Start. (*Id.*)  
20

21 8. On or about May 19, 2013, Ronald and Linda McClure spoke with  
22 Carmichael about their son attending rehab at Fresh Start.

23 9. In finding an appropriate rehab for his son, it was important to Ronald that the  
24 rehab: (1) was not a 12-step program; (2) did not have anything to do with religion;  
25

1 (3) had on-site 24-hour medical personnel; (4) provided counseling; and (5) was not  
2 in Arizona. (Defendant's Ex. L at 122-3).

3 10. At his deposition in this case, Ronald testified as to the representations  
4 Carmichael made to him that sold him on sending Jason to Fresh Start:

5 Q. Okay. Is there anything specifically that Dan [Carmichael] told you that  
6 sold you on the program?  
7

8 MR. HAMILTON: Objection. Asked and answered. You can answer.

9 THE WITNESS: It was on a speaker phone, in other words, where me and my  
10 wife could speak at the same time and hear at the same time. We asked Dan  
11 questions about the facility. We asked if there were activities. He said, yeah, there  
12 was lots of activities. Horseback riding, horseshoes, hiking, swimming, all kinds of  
13 stuff. Ping pong, pool, which we weren't too concerned about.  
14

15 We asked him if there was a medical doctor or nurse on the facility at all  
16 times. He said yes, we have a 24-hour medical person here at all times. We asked  
17 him, we were really concerned about the counseling because Jason does listen to  
18 you, or listen to professional people, and he said yes, but he says he has to go  
19 through detoxification. When he gets out of that, then we get into the sauna. And  
20 during the sauna or after the sauna, we have professional counselors that are here  
21 and they will counsel him.  
22

23 And my wife asked him about the religion and he said no, no, no, this is not  
24 religion. This is – she said what about 12-step? Because he doesn't want either one  
25

1 of those. He says no. He says there's maybe a couple things we would pull out of 12  
2 steps, which you just have to have, but not the 12-step. No, we don't do that. It's not  
3 religious affiliated in any way, shape, or form. ...

4  
5 (Id.)

6 11. Based on Mr. Carmichael's representations, Ron paid Fresh Start \$33,000.00  
7 for Jason to attend drug rehabilitation there. After an intervention, Jason traveled  
8 from Arizona to attend Fresh Start's facility near Caliente, Nevada, on or about May  
9 21, 2013.

10  
11 12. On or about May 23, 2013, once Jason was at the Fresh Start facility near  
12 Caliente, Nevada, Fresh Start had Jason sign a number of intake documents. Among  
13 these documents was a "Disclosure Form" that provided, in relevant part: "The Drug  
14 Rehabilitation technology used by the Narconon Program is based on the works of  
15 L. Ron Hubbard, founder of the Scientology religion. The Narconon program is  
16 secular (non-religious) in nature and the program does not include participation in  
17 any religious studies of any kind, Scientology or otherwise." (Defendant's Ex. D at  
18 FSM0036).

19  
20 13. Fresh Start uses the "Narconon program" to administer drug rehabilitation.  
21 The Narconon program is a standardized program whereby each person undergoing  
22 the program receives the same written materials.  
23  
24  
25

1 14. L. Ron Hubbard, the founder of the Scientology religion, is named as the  
2 author of the Narconon program and all manuals Narconon uses to train staff to  
3 administer the program.

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

11 17. ABLE is the holder of the copyrights and trademarks for the Narconon  
12 program. ABLE licenses the copyrights and trademarks for the Narconon program  
13 and all manuals to Narconon International. Narconon International, in turn,  
14 sublicenses the Narconon program and all manuals to Fresh Start pursuant to a  
15 licensing agreement. (Plaintiffs' Ex. C, Licensing Agreement).

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 19. Under a licensing agreement, ABLE has the right conduct inspections at  
21 Narconon Fresh Start. These inspections entail ABLE monitoring and correcting the  
22 manner in which Narconon Fresh Start delivers the Narconon treatment program to  
23 patients at Fresh Start. (Plaintiffs' Ex. B at 131:4 – 132:6).  
24  
25

1 20. According to a former Executive in the Narconon network, Eric Tenorio,  
2 Narconon facilities are “modeled administratively after Scientology churches using  
3 Hubbard Communication Office Policy Letters (HCOPLs).” (Plaintiffs’ Ex. D,  
4 Affidavit of Eric Tenorio, ¶ 6.)

5 21. Each piece of the Narconon program is found in scriptures from the  
6 Scientology religion, known as Hubbard Communications Office Bulletins  
7 (HCOBs). *Id.* at ¶ 6.

8 22. Patients who “graduate” from the Narconon program are sometimes asked to  
9 intern at a Narconon center and then may become full staff members at the facility.  
10 Students who stay on as counselors or staff are trained with Scientology scriptures,  
11 HCOBs and HCOPLs. (Plaintiffs’ Ex. D, at ¶ 24.) These “graduates” are “being  
12 indoctrinated into Scientology teachings and being groomed to become  
13 Scientologists.” *Id.*

14 23. Narconon’s connection to the Scientology religion “was a constant  
15 complaint” by students. (Plaintiffs’ Ex. E at 198:25 – 199:15, Excerpts of  
16 Deposition of Hayley Matthews).

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 (Plaintiffs' Ex. F, Narconon Manual, Basic Staff Hat, at 21).

5 25. In answer to Interrogatories, Fresh Start has responded, "Fresh Start does not  
6 provide 'counseling' or 'treatment' per se under the traditional definitions of those  
7 descriptions." *See* (Plaintiffs' Ex. G, Fresh Start's Answer to Interrogatory No. 14,  
8 *Welch v. Narconon Fresh Start et al.*, 2:14-cv-00167-JCM-CWH (D. Nev.)).  
9

10 26. Jason testified in his deposition that he benefitted from therapist sessions he  
11 received at a drug rehab he attended after Narconon. He contrasted the therapist  
12 sessions as talking about all the "stuff you don't talk about Narconon." (Defendant's  
13 Ex. K at 372:23 – 373:17).  
14

15 27. Fresh Start does not have medical personnel on-site at its centers, such as its  
16 center near Caliente, Nevada. Motion at 17:23 – 28. Jason McClure, however, was  
17 seen by a doctor before beginning the Narconon program.

18 28. ABLE awarded a plaque to Fresh Start that provides, in relevant part:  
19 [Fresh Start Executive Director Larry Trahant] and his dynamic team at Narconon  
20 Fresh Start are hereby warmly thanked and highly commended for their dedication  
21 and hard work. They give us tremendous back up in introducing LRH to the world  
22 and are saving lives on a daily basis. There are thousands of beings who have taken  
23 their first steps on The Bridge, thanks to the compassion and efforts of this team.  
24 (Plaintiffs' Ex. H, Plaque).  
25

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 30. Daniel Morgan worked for Narconon Fresh Start for ten years as a web  
9 developer. For the first nine-and-a-half years, Mr. Morgan worked remotely from  
10 Idaho. When Mr. Morgan moved to California to work on-site to work at Fresh  
11 Start's corporate offices, he left his job at Fresh Start "[b]ecause of continued  
12 pressure on me to become a Scientologist." (Plaintiffs' Ex. J, Excerpts of Daniel  
13 Morgan Deposition, at 91:11-13).

14  
15 31. Jason McClure voluntarily left Fresh Start on or about July 8, 2013.

16 32. He relapsed thirty-seven days after leaving Fresh Start when he started  
17 injecting cocaine with two women he met at Fresh Start, one of whom worked there  
18 as an intern. (Defendant's Ex. K at 458:4 – 8, 440:13 – 18).

19  
20 **III. ARGUMENT**

21 **A. Legal standard**

22 "Summary judgment is appropriate only if, taking the evidence all reasonable  
23 inferences drawn therefrom in the light most favorable to the non-moving party,  
24 there are no genuine issues of material fact and the moving party is entitled to  
25

1 judgment as a matter of law.” *Furnace v. Sullivan*, 705 F. 3d 1021, 1026 (9<sup>th</sup> Cir.  
2 2013). The moving party satisfies its burden by “pointing out there is an absence of  
3 evidence to support the non-moving party’s case.” *Soremekun v. Thrifty Payless,*  
4 *Inc.*, 509 F.3d 978, 984 (9<sup>th</sup> Cir. 2007). Once the moving party does this, the burden  
5 shifts to the non-moving party to raise a genuine issue for trial. *Cline v. Indus.*  
6 *Maint. Eng’g & Contracting Co.*, 200 F.3d 1223, 1229 (9<sup>th</sup> Cir. 2000).

7  
8 The same evidence creates triable issues of fact concerning Plaintiffs’ claims  
9 for breach of contract, fraud, negligent misrepresentation, and deceptive trade  
10 practices. In relevant part, Fresh Start represented to Ron that its drug rehab (a) had  
11 on-site 24-hour medical personnel, (b) would provide Jason with counseling, and (c)  
12 did not involve religion. Each of these statements was knowingly false.

### 13 **B. Lack of Counseling**

14  
15 Although in its Motion Fresh Start asserts that it did provide counseling to  
16 Jason, Fresh Start has conceded in discovery that “Fresh Start does not provide  
17 ‘counseling’ or ‘treatment’ per se under the traditional definitions of those  
18 descriptions.” See Exhibit 1 Fresh Start’s Answer to Interrogatory No. 14, *Welch v.*  
19 *Narconon Fresh Start et al.*, 2:14-cv-00167-JCM-CWH (D. Nev.). [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
2  
3 See Plaintiffs' Ex. F, Narconon Manual, Basic Staff Hat, at 29. Narconon staff are  
4 not supposed to go beyond the program's written materials and mix other treatment  
5 approaches such as counseling. Fresh Start has admitted in discovery that it  
6 administers the Narconon program as written.

7  
8 In its Motion, however, Fresh Start asserts that its staff member Sean Griffin  
9 did, in fact, provide Jason with counseling. Motion at 17:11 – 20. Fresh Start argues  
10 that Jason "interacted with Mr. Griffin, a certified drug counselor, about the issues  
11 underlying his drug use." *Id.* Apparently, since Fresh Start has conceded in its  
12 interrogatory answers that it does not provide counseling, Fresh Start couches its  
13 argument that Jason received counseling because he "interacted" with a counselor.  
14

15 In any case, Fresh Start's assertions in its Motion that it provided Jason  
16 McClure counseling are contradicted by Fresh Start's own manuals on how to  
17 administer the Narconon program, Fresh Start's answers in discovery, and Jason  
18 McClure's testimony. In his deposition, Jason complained that he did not receive  
19 counseling at Fresh Start:  
20

21 Q. Okay. What other things do you think you were numbing yourself  
22 from in that –

23 A. Well, it's all the stuff that you don't talk about in Narconon [Fresh  
24 Start] that you did talk about in HIR [a subsequent rehab facility] which is why the  
25 therapist sessions worked for me.

1 (Defendant's Ex. K at 372:23 – 373:17).

2 **C. 24-hour on-site medical professionals**

3 Fresh Start represented to Ronald McClure that “we have a 24-hour medical  
4 person [at the facility] at all times.” (Defendant's Ex. L at 122-3). Fresh Start does  
5 not have any medical personnel on-site, let alone medical personnel present at the  
6 facility at all times. In making this representation, Fresh Start surely knew whether  
7 or not its own facilities have medical personnel on-site.  
8

9 In its Motion, Fresh Start mischaracterize Plaintiff Ronald McClure's testimony  
10 as being that Fresh Start merely represented to him that “medical care would be  
11 available to Jason McClure, if necessary.” Motion at 17. But Ronald testified that he  
12 was concerned with Jason having *on-site* medical personnel and that Fresh Start  
13 expressly represented they had *on-site* medical care.  
14

15 Of course, there is a significant difference between a drug rehabilitation  
16 facility staffed with medical personnel and one that is not. A facility with on-site  
17 medical care is a higher level of care, especially in the case of emergencies. For  
18 persons recovering from drug addiction, immediate access to emergency medical  
19 services is understandably very important.  
20

21 Although Fresh Start may have taken Jason McClure to a doctor outside the  
22 premises of its facility, that is not what Ronald was promised nor what he paid for.

23 ///

24 ///

**D. The Narconon program and religion**

It was important to Plaintiffs that the drug rehabilitation program for Jason McClure did not involve religion. Candy Shipley, Jason's sister, began speaking with Dan Carmichael in early 2012 about Jason attending Fresh Start. (Plaintiffs' Ex. A). Ms. Shipley "wanted to make sure [Fresh Start] was NOT religious based and [Carmichael] assured [her] it was NOT." (*Id.*)

Ronald testified that Fresh Start intake specialist Dan Carmichael represented to him that drug rehab at Fresh Start was not religious and was "not religious [sic] affiliated in any way, shape or form."

And my wife asked him about the religion and he said no, no, no, this is not religion. This is – she said what about 12-step? Because he doesn't want either one of those. He says no. He says there's maybe a couple things we would pull out of 12 steps, which you just have to have, but not the 12-step. No, we don't do that. It's not religious affiliated in any way, shape, or form. ...  
(Defendant's Ex. L at 122-3).

But contrary to Fresh Start's representation to Ronald, the Narconon program's connections to the Scientology religion are overwhelming. The Narconon program is comprised of scriptures from the Scientology religion. (Plaintiffs' Ex. D, Affidavit of Eric Tenorio, ¶ 6.) Narconon facilities are "modeled administratively after Scientology churches using Hubbard Communication Office Policy Letters (HCOPLs)." *Id.* L. Ron Hubbard, the founder of the Scientology religion, is the

1 author of all books in the Narconon program and all manuals used to administer the  
2 program.

3 ABLE supervises Fresh Start's use of the Narconon program and its  
4 trademarks. (Plaintiffs' Ex. B at 131:4 – 132:6). ABLE also develops the Narconon  
5 materials. *Id.* ABLE is made up of members of the Scientology clergy known as the  
6 Sea Organization or "Sea Org." *Id.* at 313:14 – 314:24).

7  
8 Fresh Start's own witness, former employee Hayley Matthews, testified that  
9 Narconon's connection to the Scientology religion "was a constant complaint" by  
10 patients in the facility. Plaintiffs' Ex. E, Hayley Matthews Deposition, 198:25 –  
11 199:15. Ms. Mathews testified that Narconon and Scientology "do the same thing."  
12  
13 *See* pages 283-4.

14 In a related vein, Dan Morgan worked as a web developer for Fresh Start for  
15 ten years. Mr. Morgan worked remotely from Idaho for the first nine-and-a-half  
16 years before moving to Glendale, California to work on-site at Fresh Start's  
17 corporate office. Mr. Morgan testified that he left his job at Fresh Start "[b]ecause of  
18 continued pressure on me to become a Scientologist." Morgan Deposition, 91:11-13.  
19

20 In addition, Plaintiffs have adduced evidence that Fresh Start has been  
21 thanked for introducing persons to Scientology and for introducing the world to L.  
22 Ron Hubbard. ABLE presented Fresh Start a plaque that provided, in relevant part:

23  
24 Larry [Trahan, Executive Director of Fresh Start] and his  
25 dynamic team at Narconon Fresh Start are hereby warmly  
thanked and highly commended for their dedication and  
hard work. They give us tremendous back up in

1 introducing LRH to the world and are saving lives on a  
2 daily basis. There are thousands of beings who have taken  
3 their first steps on The Bridge, thanks to the compassion  
4 and efforts of this team.

5 Plaintiffs' Ex. H. [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 Fresh Start places principal reliance on *Sedlock v. Baird*, 235 Cal. App. 4th  
15 874, 878, 185 Cal. Rptr. 3d 739, 742 (Cal.Ct. App. 2015), to argue that its program  
16 is secular. In *Sedlock*, the court concluded that a reasonable observer would not  
17 view the school district's yoga program as advancing or inhibiting religion. In  
18 contrast to the yoga program in *Sedlock*, however, here a reasonable fact-finder  
19 could find that Fresh Start uses the Narconon program to advance the Scientology  
20 religion. Fresh Start has been thanked for "introducing [L. Ron Hubbard] to the  
21 world" and for getting "thousands of beings on The Bridge." In this vein, Eric  
22 Tenorio attests that patients who "graduate" from the Narconon program are  
23 sometimes asked to intern at a Narconon center and then may become full staff  
24  
25



1 members at the facility. Further, students who stay on as counselors or staff are  
2 trained with Scientology scriptures, HCOBs and HCOPLs. Plaintiffs' Ex. D,  
3 Tenorio Affidavit, ¶ 24. These "graduates" are "being indoctrinated into Scientology  
4 teachings and being groomed to become Scientologists." *Id.*

5         Fresh Start is quick to point out that Jason McClure did not know the tenets of  
6 Scientology at his deposition. But Jason did not complete the Narconon program  
7 and then stay on as a counselor. That is where Mr. Tenorio attested that graduates  
8 are indoctrinated to become Scientologists and are groomed to become  
9 Scientologists.  
10

11         Further, even if Jason did not know the specifics of Scientology at his  
12 deposition, that does not mean Jason did not feel deceived by Narconon's extensive  
13 connections to the Scientology religion after being assured Fresh Start was not  
14 religiously affiliated. Such a breach of trust was not helpful to Jason's recovery.  
15

16         Finally, Fresh Start argues that Plaintiffs are required to offer expert  
17 testimony to show that the Narconon program is religious. The only thing Fresh  
18 Start offers in support of this proposition is an objection the undersigned made  
19 during a deposition in a different case. Motion at 14:22 – 25. Of course, the  
20 undersigned's deposition objection is not precedent. More importantly, Plaintiffs  
21 have adduced substantial evidence from the testimony of Fresh Start employees,  
22 from former employees, and from Fresh Start's own documents that show the  
23 program has religious motivations.  
24  
25

1 In sum, Plaintiffs have adduced substantial evidence that Fresh Start uses the  
2 Narconon program to advance the Scientology religion. Fresh Start has received  
3 recognition for doing so from ABLE, a group comprised of Scientology clergy.  
4 Plaintiffs paid \$33,000.00 based on Fresh Start's false representation that it was "not  
5 religious[ly] affiliated in any way, shape, or form." For these reasons, there is a  
6 triable issue of fact and the Court should deny Fresh Start's Motion.  
7

### 8 **E. Fraud**

9 To prevail on claim for fraud under Nevada law, a plaintiff must allege that a  
10 defendant (1) made a false representation; (2) knew or believed that the  
11 representation was false or had an insufficient basis for making the representation;  
12 (3) intended to induce plaintiff to act based upon the misrepresentation; (4) obtained  
13 the plaintiff's justifiable reliance upon defendant's misrepresentation; and (5) the  
14 plaintiff sustained damages as a result of justifiable reliance upon the  
15 misrepresentation. *Bartmettler v. Reno Air, Inc.*, 114 Nev. 441, 446, 956 P.2d 1382,  
16 1386 (1998); *Daou v. Abelson*, 2014 WL 939086 at \*4 (D. Nev. Mar. 10, 2014).  
17

18 Plaintiffs survive summary judgment on their fraud claim with respect to  
19 Fresh Start's representations as to counseling, 24-hour on-site medical personnel,  
20 and its lack of religious affiliation. Dan Carmichael made these false representations  
21 to Ron in a phone call with Ron and his wife. As set forth above, the drug rehab  
22 program at Fresh Start – the Narconon program – does not contain counseling, does  
23 not have on-site medical personnel, and has extensive connections to the  
24  
25

1 Scientology religion. Given that the representations related to basic characteristics  
2 of the rehab program at Fresh Start, Carmichael surely knew these representations to  
3 be false or had an insufficient basis for making the representation. Carmichael made  
4 these representations in selling the program to Ronald and testified that these  
5 representations were what “sold” him on Fresh Start’s program. Finally, Ronald  
6 paid \$33,000.00 to Fresh Start based on these false representations.  
7

#### 8 **F. Negligent Misrepresentation**

9 To prove a claim for negligent misrepresentation under Nevada law, a  
10 plaintiff must show that a defendant (1) acting in the course of his profession or  
11 employment, (2) supplied false information for the guidance of others; (3) may be  
12 liable for the plaintiff’s losses based on; (4) the plaintiff’s justifiable reliance on the  
13 information, because (5) the defendant failed to exercise reasonable care or  
14 competence in obtaining or communicating the information. *Barmettler v. Reno Air,*  
15 *Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387 (Nev. 1998).  
16

17 There are genuine issues of material fact with respect to at least three  
18 misrepresentations that Fresh Start made to Ronald McClure. Ronald McClure  
19 testified (1) that Dan Carmichael, acting in the course of his employment for Fresh  
20 Start; (2) supplied Ronald with false information that Narconon would provide  
21 Jason McClure counseling, that Fresh Start had 24-hour medical personnel *at the*  
22 *facility*, and that the Fresh Start program was not connected to religion in any way.  
23

24 As Fresh Start points out in its Motion, Ronald chose to send Jason to Fresh  
25

1 Start based on these representations. Motion at 13. Finally, there is evidence that, at  
2 a minimum, Mr. Carmichael failed to use reasonable care in making these  
3 misrepresentations to Ronald. Indeed, it was important to Ronald that there be 24-  
4 hour medical supervision *at the facility* and Mr. Carmichael incorrectly stated there  
5 was. Similarly, Mr. Carmichael incorrectly represented to Ronald that Fresh Start  
6 provided counseling and was in no way affiliated with religion.  
7

8 Fresh Start cites *Copper Sands Homeowners Ass'n, Inc. v. Copper Sands*  
9 *Realty, LLC*, No. 2:10-CV-00510-GMN, 2013 WL 3270430, at \*8 (D. Nev. June 26,  
10 2013), as support for its argument that Plaintiffs' claim for negligent  
11 misrepresentation fails. That case is inapposite. In *Copper Sands*, the plaintiffs had  
12 no recollection of conversations with defendants or their agents. *Id.* Because the  
13 plaintiffs in *Copper Sands* could not even recall the alleged false representations, the  
14 court granted the defendants' motion for summary judgment on the claim.  
15

16 Here, in contrast to *Copper Sands*, Ronald McClure testified as to the specific  
17 false representations Mr. Carmichael made to him in selling Ronald the program at  
18 Fresh Start.  
19

20 For these reasons, there are triable issues of fact on Plaintiffs' claim of  
21 negligent misrepresentation.

## 22 **G. Breach of contract**

23 To prove a claim of breach of contract under Nevada law requires (1) the  
24 existence of a valid contract (2) the defendant's breach of that contract and ( 3)  
25

1 damages as a result of the breach. *Cohen-Breen v. Gray TV Group, Inc.*, 661 F.  
2 Supp. 1158, 1171 (D. Nev. 2009). Plaintiff Ronald McClure entered into an  
3 agreement with Fresh Start to provide drug rehabilitation to Jason McClure. Under  
4 their agreement, Fresh Start was to provide Jason McClure drug rehabilitation that  
5 included counseling, had 24-hour on-site medical personnel, and that did not involve  
6 religion. For Fresh Start's services, Ronald McClure was to pay \$33,000.00, which  
7 he did.  
8

9 Fresh Start seeks summary judgment on this claim arguing that (a) Plaintiffs  
10 have not adduced evidence of a breach; and (b) Plaintiffs cannot show their own  
11 performance under the contract. Plaintiffs address these arguments in turn.  
12

13 **1. Plaintiffs have adduced evidence of Fresh Start's breaches.**

14 Plaintiffs have adduced ample evidence that Fresh Start did not hold up its  
15 end of the bargain with Plaintiffs by failing to provide counseling, 24-hour on-site  
16 medical personnel, and drug rehabilitation that did not involve religion. Fresh Start  
17 argues that the parties' written contract required only that Fresh Start provide  
18 "residential treatment to clients." Motion at 19 (citing Defendant's Ex. D at FSM  
19 0023). But the document Fresh Start cites is not the parties' written contract, but  
20 instead it is a "Special Waiver for Persons Enrolling in the Narconon Program who  
21 have taken psychiatric medications or been temporarily hospitalized." Jason  
22 McClure signed this waiver at Fresh Start's request once he entered Fresh Start's  
23 facility. That document does not even purport to be a written contract between  
24  
25

1 Ronald McClure and Fresh Start. Indeed, there is no written contract between  
2 Ronald McClure and Fresh Start. Instead, the evidence shows an oral contract  
3 between Ronald McClure and Fresh Start with Jason McClure as a third-party  
4 beneficiary.

5  
6 **2. Plaintiff Ronald McClure fully performed under the parties’**  
7 **contract and any non-performance by Jason McClure was excused**  
8 **by Fresh Start’s material breaches.**

9 As set forth above, the contract at issue in this case was between Ronald  
10 McClure and Fresh Start. Ronald paid Fresh Start \$33,000.00 under that contract.  
11 Fresh Start does not dispute this. *See* Motion at 6:18 – 19. By paying the bargained-  
12 for-price for Fresh Start’s services in full, Ronald fully performed under the  
13 contract.

14 Fresh Start argues, however, that because in their view, *Jason* did not fully  
15 perform under the contract, Fresh Start is entitled to summary judgment on this  
16 claim. First, this argument fails because Ronald – the party who entered into the  
17 contract for Plaintiffs – completely performed. Second, any non-performance by  
18 Jason McClure was excused because Fresh Start’s failure to provide counseling, 24-  
19 hour on-site medical care, and non-religious drug rehabilitation services constituted  
20 material breaches. At the very least there is a triable issue of fact as to whether Fresh  
21 Start’s failure to provide these promised services constituted material breaches.  
22 Whether a breach under a contract constitutes a material breaches is a question of  
23 fact for the jury. *Nevada First Bancorp v. Highland A.V.A., LLC*, 2010 WL  
24  
25

1 3291754, at \*1 (Nev. July 6, 2010). Where one party to a contract materially  
2 breaches the contract, the other party's further performance under the contract is  
3 excused. *See Young Elec. Sign Co. v. Fohrman*, 86 Nev. 185, 187, 466 P.2d 846,  
4 847 (Nev. 1970). Accordingly, if the jury concluded that Fresh Start's breaches were  
5 material breaches, Jason's McClure further performance would be excused.

6  
7 For these reasons, the Court should deny summary judgment as to Plaintiffs'  
8 claim for breach of contract.

#### 9 **H. Nevada Deceptive Trade Practices Claim**

10 To prove a claim under the Nevada Deceptive Trade Practices Act ("DTPA"),  
11 a plaintiff must prove "(1) an act of consumer fraud by the defendant (2) caused (3)  
12 damage to the plaintiff." *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 658 (D.  
13 Nev. 2009). To recover under the DTPA, a plaintiff must show "a knowing  
14 misrepresentation, an intent to mislead, or a false statement of fact." *Phillips v.*  
15 *Dignified Transition Solutions*, No. 2:13-CV-2237-GMN-VCF, 2015 WL 5056406,  
16 at \*6 (D. Nev. Aug. 25, 2015).

17  
18 Plaintiffs have adduced ample evidence of Fresh Start's knowing  
19 misrepresentations, intent to mislead, and false statements of fact. With respect to  
20 Carmichael's representations that Fresh Start's rehab program had 24-hour on-site  
21 medical personnel, provided counseling, and was not in any way affiliated with  
22 religion, these plainly were false statements of fact, knowing misrepresentations,  
23  
24  
25

1 and were made with an intent to mislead. At the very least, they create triable issues  
2 of fact for the jury.

3 Plaintiffs bring their DTPA claim under NRS § 598.0915(5) and (9) which  
4 make it a deceptive trade practice for a defendant who:

5  
6 5. Knowingly makes a false representation as to the characteristics,  
7 ingredients, uses, benefits, alterations or quantities of goods or services for sale or  
8 lease or a false representation as to the sponsorship, approval, status, affiliation or  
9 connection of a person therewith.

10 9. Advertises goods or services with intent not to sell or lease them as  
11 advertised.

12 NRS § 598.0915(5),(9). Fresh Start's conduct in falsely representing to Ronald  
13 McClure that its drug rehab program provided counseling, had 24-hour on-site  
14 medical personnel, and was in no way affiliated with religion falls squarely within  
15 the terms of these provisions.  
16

17 Beyond arguing that Plaintiffs have not identified any false statements of fact,  
18 Fresh Start asserts that Plaintiffs' claim under NRS § 598.0915(9) fails because  
19 Plaintiffs allege misrepresentations regarding *services*, not property. Fresh Start  
20 interprets NRS § 598.0915(9) as inapplicable to advertisements or representations  
21 relating to services. Fresh Start cites *Wilson v. Stratosphere Corp.*, 371 F. App'x 810  
22 (9th Cir. 2010) in support of its argument.  
23  
24  
25



1 Fresh Start's argument is unavailing. First, the plain language of NRS §  
2 598.0915(9) contradicts Fresh Start's interpretations as it expressly applies to  
3 advertisements of services:

4 It is a deceptive trade practice if a defendant:

5 9. Advertises goods **or services** with intent not to sell or lease them as  
6 advertised.  
7

8 NRS § 598.0915(9) (emphasis supplied).  
9

10 Second, the *Wilson* decision did not interpret NRS § 598.0915(9) as applying  
11 only to sales of property and not to sales services. 371 F. App'x at 811. Indeed,  
12 whether NRS § 598.0915(9) applies to sales of services was not even addressed in  
13 the decision.

14 For all these reasons, the Court should deny Fresh Start's Motion as to  
15 Plaintiffs' DTPA claim.  
16

17 **I. Plaintiffs may recover punitive damages.**

18 By the express terms of Nevada's punitive damages statute, plaintiffs may  
19 recover punitive damages for Fresh Start's fraud. Under NRS § 42.005(1), a plaintiff  
20 may recover punitive damages where the plaintiff shows "by clear and convincing  
21 evidence that the defendant has been guilty of oppression, fraud or malice, express  
22 or implied." "Fraud" means an intentional misrepresentation, deception or  
23 concealment of a material fact known to the person with the intent to deprive  
24 another person of his or her rights or property or to otherwise injure another  
25

1 person.” § 42.001(2). *Kennedy v. Carriage Cemetery Servs., Inc.*, 727 F. Supp. 2d  
2 925, 935 (D. Nev. 2010).

3 Plaintiffs have adduced ample evidence that Fresh Start made false statements  
4 to Ronald McClure as to its drug rehabilitation program. There is, at a minimum, a  
5 genuine issue of material fact as to whether to whether Fresh Start committed fraud.  
6 The Court should deny Fresh Start’s Motion as to Plaintiffs’ claim for punitive  
7 damages.  
8

9 **IV. CONCLUSION**

10 Fresh Start’s misrepresentations as to the basic characteristics of its drug  
11 rehabilitation program deprived Plaintiff Ronald McClure of the ability to make a  
12 fully-informed decision about where to send his son for drug treatment. There are  
13 triable issues of fact as to Fresh Start’s false representations that its rehab program  
14 provides counseling, offers 24-hour on-site medical personnel, and is in no way  
15 affiliated with religion. Plaintiffs are entitled to present their case to a jury.  
16

17 DATED this 2<sup>nd</sup> day of November, 2015.  
18

19 Respectfully submitted,

20 By: /s/Ryan A. Hamilton  
21

22 RYAN A. HAMILTON, ESQ.  
23

24 *Attorney for Plaintiffs*  
25

**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I certify that on this 2nd day of November, 2015 I filed the foregoing

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY**

**JUDGMENT** via the Court's CM/ECF system, which will send copies to the following:

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